

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

RYAN MASTERS,

Defendant.

Case No. 2:12-cr-00145-MMD-GWF

ORDER

(Defendant's Motion for Release of *Brady*  
Materials – dkt. no. 46;  
Defendant's Motion in Limine – dkt. no. 47;  
Government's Sealed Ex Parte Motion for  
*In Camera* Review of Potential *Henthorn*  
Material – dkt. no. 59)

Before the Court are Defendant Ryan Masters' Motion for Release of *Brady* Materials (dkt. no. 46) and Motion in Limine (dkt. no. 47), and the government's Sealed Ex Parte Motion for *In Camera* Review of Potential *Henthorn* Material (dkt. no. 59).

**I. BACKGROUND**

On April 25, 2012, Masters was indicted on three counts of possession of fifteen or more counterfeit or unauthorized access devices in violation of 18 U.S.C. § 1029(a)(3).

This case is scheduled for trial on October 30, 2012. The three pending motions addressed in this Order regard the parties' requests regarding production of certain evidence prior to trial.

**II. DEFENDANT'S MOTION FOR RELEASE OF *BRADY* MATERIAL**

Defendant requests that the Court order the government to produce *Brady* materials favorable to Defendant's special circumstances witnesses. (Dkt. no. 46.) The

1 government states that it does not intend to present any such witnesses at trial, but  
2 should this change, it will comply with its discovery obligations. (Dkt. no. 63 at 1.)

3 As the government does not presently plan on calling the special circumstance  
4 witnesses relevant to Defendant's Motion, the Motion is denied without prejudice.

5 **III. DEFENDANT'S MOTION IN LIMINE TO PRECLUDE THE GOVERNMENT**  
6 **FROM OFFERING INTO EVIDENCE SEXUALLY EXPLICIT PHOTOS OR**  
7 **VIDEO OF DEFENDANT**

8 **A. The Evidence Defendant Wishes to Exclude**

9 The government has produced hard drives that depict Masters in the nude and in  
10 other sexually explicit positions.<sup>1</sup> The government plans to use this evidence to prove to  
11 a jury the operator of the [veovis@gmail.com](mailto:veovis@gmail.com) email account.

12 Defendant argues that the government does not need the photos or videos of  
13 Masters because the United States has produced a significant amount of information  
14 from Google regarding the relevant internet service provider numbers (ISPN) linked to  
15 the email address. Defendant further asserts that this evidence is sufficient for the  
16 government to establish its theory that Defendant operated the email address, and as  
17 such the sexually explicit media should not be admitted into evidence.

18 The government opposes Defendant's motion. It states that it will attempt to  
19 identify pictures and items that do not contain sexually explicit material to prove  
20 ownership and will redact any sexually explicit material where possible. However, the  
21 government goes on to argue that "such photos – if necessary – may be the strongest  
22 evidence that [D]efendant controlled these computers and E-mail account: how else  
23 could such private pictures end up on these computers and E-mail account[?] Access to  
24 such photos would normally be carefully guarded." (Dkt. no. 62 at 2.)

25 **B. Analysis**

26 Defendant argues that the photos and video should be precluded pursuant to  
27 Fed. R. Evid. 401 and 403. Although Defendant purports to argue that the evidence is

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28 <sup>1</sup>On October 4, 2012, the government delivered a 404(b) notice to Defendant's  
counsel that it intended to present evidence that featured Masters *in flagrante delicto*.

1 not relevant, this is incorrect. Though Defendant is correct that the photos and video are  
2 not “determinative of the government’s case,” (dkt. no. 47 at 2), a brick is not a wall, and  
3 so long as the evidence presented makes a fact of consequence more or less probable,  
4 that evidence is relevant. See Fed. R. Evid. 401; Advisory Committee Notes to Fed. R.  
5 Evid. 401 (“A brick is not a wall,” or . . . [i]t is not to be supposed that every witness can  
6 make a home run.” (citations removed)). Here, the photos and video make it more likely  
7 than not that the email account from which they came was Defendant’s email account.

8 While the evidence may be relevant, the Court holds that it should be excluded  
9 under Fed. R. Evid. 403 because of the threat of unfair prejudice it could produce. The  
10 government argues that the probative value of the evidence is high – a personal,  
11 password-protected email account containing sexually explicit videos and photos  
12 typically belongs to the subject of those photos. (See dkt. no. 62 at 2.) Even if the  
13 government is correct about the strength of the evidence, the (1) availability of other  
14 sources to establish ownership, and (2) prejudice to Defendant which would result from  
15 introducing the evidence make the photos and video inadmissible.

16 The government does not dispute that it has several other pieces of evidence that  
17 will help it prove Defendant operated [veovis@gmail.com](mailto:veovis@gmail.com). In fact, the government has  
18 subpoenaed ISP information regarding the email account that can be matched with the  
19 seized laptops. Therefore, there is little need for the sexually explicit photos and video.  
20 Further, there is a high risk that presenting the evidence would prejudice a jury against  
21 Defendant. The evidence could mislead the jury and result in it considering irrelevant  
22 factors such as Defendant’s character or his behavior unrelated to the crimes charged.

23 Because the prejudicial value of the evidence outweighs its relevance, and  
24 because the government has other means for proving ownership of the  
25 [veovis@gmail.com](mailto:veovis@gmail.com) email address, the Court grants Defendant’s Motion.

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1 **IV. THE GOVERNMENT'S EX PARTE MOTION FOR *IN CAMERA* REVIEW OF**  
2 **POTENTIAL *HENTHORN* MATERIAL**

3 The Court has issued an order under seal determining that the information  
4 contained in Exhibit A to the government's Sealed Ex Parte Motion for *In Camera*  
5 Review of Potential *Henthorn* Material (dkt. no. 59) is not discoverable and need not be  
6 produced.

7 **V. CONCLUSION**

8 IT IS THEREFORE ORDERED that Defendant's Motion for Release of *Brady*  
9 Materials (dkt. no. 46) is DENIED without prejudice.

10 IT IS FURTHER ORDERED that Defendant's Motion to Preclude the Government  
11 from Offering into Evidence Sexually Explicit Photos / Video of Defendant (dkt. no. 47) is  
12 GRANTED.

13 IT IS FURTHER ORDERED that the information contained in Exhibit A to the  
14 government's Sealed Ex Parte Motion for *In Camera* Review of Potential *Henthorn*  
15 Material (dkt. no. 59) IS NOT DISCOVERABLE AND NEED NOT BE PRODUCED.

16 DATED THIS 25<sup>th</sup> day of October 2012.

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20 MIRANDA M. DU  
21 UNITED STATES DISTRICT JUDGE  
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